

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPL. CRIMINAL APPLN. NO.44/96 CONVERTED FROM  
SPECIAL CIVIL APPLICATION No 371 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HARIJAN MADHAV WALA

Versus

STATE OF GUJARAT

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Appearance:

MR SV PARMAR for Petitioner

MR KC SHAH, AGP for respondents.

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 13/09/96

ORAL JUDGEMENT

1 By order dated 27/7/1995 passed by the Sub-Divisional Magistrate, Gondal in Externment Case No. 10 of 1995 the petitioner Harijan Madha Wala was ordered to be externed for a period of six months from the date of receipt of the said order. The petitioner carried the matter in appeal before the Deputy Secretary, Home Department and as per the order dated 21/12/1995 the petitioner's appeal was dismissed. Both these orders are annexed at pages 7 and 18 in this petition and they have

been subjected to challenge in this petition under Article 226 of the Constitution of India.

2. This petition was initially filed as Special Civil Application No. 371/1996 and appears to have been converted into Special Criminal Application No. 44/1996. The first order which was passed was merely of issuance of rule returnable on 30/1/1996, as can be seen from order dated 17/1/1996 (Coram : J.M. Panchal, J.). It appears that the petitioner was required to move an application for review as per Misc. Criminal Application No. 3100/96 for review of the order dated 27-29/3/1996 rendered by this Court (Coram : S.M. Soni, J.). The order which was sought to be reviewed reads :-

"The learned advocate for the petitioner is directed to file affidavit of service on or before 6/4/1996, in default the petition shall stand dismissed."

It appears that by order dated 24/7/1996 (Coram : S.M. Soni, J.) the review was allowed. That is how this matter stood revived and was placed on the board for final hearing on 8/8/1996. This matter came up for hearing before this Court from time to time. However, on 29/8/1996 following order was passed :-

"No-one present for the petitioner when the matter is repeatedly called out. For the ends of justice S.O. to 6/9/1996."

3. The matter met with the same fate on 6/9/1996. That is how the matter is kept today. When the matter has been called out repeatedly no-one has remained present for the petitioner. However, as submitted by the Ld. AGP for the State the order of externment for a period of six months was passed on 27/7/1995 and the period of externment would have been over long back. Assuming that the said order for externment was stayed in appeal proceedings, the order dismissing the appeal was passed on 21/12/1995 and the said order has not been stayed by this Court while passing the first order issuing rule as stated above. In that view of the matter as on today, the period of externment has already expired. In that view of the matter, the petition has become infructuous and is required to be disposed of accordingly.

Rule is discharged as the petition does not survive.

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